wealth, 1 Robinson (Va.) 735. So in the later cases, as in *Commonwealth v. Robinson,* 146 Mass. 571, this principle seems to be approved and it is there held that evidence of another crime is admissible to show motive when the two crimes are parts of one plan, actuated by a common purpose Under a California decision, evidence of a robbery was admissible when the accused was on trial for the killing of an officer. *People v. Pool,* 27 Cal. 572; and usually where the acts are so connected that they might be regarded as being the continuation of the same transaction, evidence is admissible. *State v. Wentworth,* 37 N. H. 197.

DEATH—PRESUMPTION OF SURVIVORSHIP.—DUNN V. NEW AMSTERDAM CASUALTY CO., 118 N. Y. SUPP. 491.—*Held,* that where insured and his beneficiary, under a policy payable to the legal representatives of insured on the beneficiary's prior death, both perished in the same disaster, no presumption of the survivorship of either will be indulged, and the personal representatives of insured must establish her survivorship by proof to recover on the policy.

Under the civil law, where two persons perished in the same disaster, and there are no circumstances showing which survived, presumptions as to survivorship arise from the probabilities resulting from strength, age, and sex of parties. *Succession of Langles,* 105 La. 39. But the common law indulges in no presumption of survivorship whatever may have been the age, sex, or physical condition of persons. *Faul v. Halick,* 18 App. (D C.) 9; *U. S. Casualty Co. v. Kracer,* 169 Mo. 301. It has been wrongly held that where there is no way to determine which of several parties died first, the rights of succession to their estates are to be determined as if death occurred to each at the same time. *In re Wilbur,* 20 R. I. 126. But the true rule is in accord with the principal case, XIX., *Yale Law Journal* p. 375.

FRAUDS, STATUTE OF—PROMISE OF VENDOR OF CORPORATE STOCK TO REPURCHASE.—SCHAEFFER V. STRIEDER, 89 N. E. 618 (MASS.)—Where the defendant induced the plaintiff to purchase certain stock, the defendant agreeing to refund the purchaser's money at any time on thirty days' notice, should he become dissatisfied, it was *held,* that such a contract was not a contract for the sale of "goods, wares and merchandise," within the statute of frauds.

It is generally held, as in the case under discussion, that where a purchase is made of securities, a promise by the seller to return the money paid for them, if the purchaser becomes dissatisfied, is not within the statute of frauds. *Fitzpatrick v. Woodruff,* 96 N. Y. 561. In *Gwnvell v. Morris,* 2 Cal. App. 451., the same was held, that such a contract is not within the statute, and the reason given for the holding being that the consideration for the defendant's promise was not for the sale of the stock, but was for its purchase by the plaintiff which was executed, and the transfer of the stock became a mere condition incidental to the defendant's promise. A contract, however, between the parties to an executed sale to resell the goods is within the statute. *Smith v. Bryan,* 5 Md. 141; *Gorman v. Brossard,* 120 Mich. 611. Also, an oral agreement by a third

person to repurchase bonds if unsatisfactory to the vendee is within the statute. *Chamberlain v. Jones,* 32 App. Div. N. Y. 237. And, when the third person is the agent of the vendor, the same has been held. *Morse v. Douglass,* 99 N. Y. S. 392.

INSURANCE—POLICY—CANCELLATION BY INSURER—RETURN OF UNEARNED PREMIUM.—TAYLOR V. INSURANCE CO. OF NORTH AMERICA, 105 PAC. 354 (OKL.).—*Held,* that the return of the unearned premium is essential to a cancellation of a policy by an insurance company, where the policy among other things provides, "When this policy is cancelled by this company by giving notice, it shall retain only the *pro rata* premium." Dunn and Hayes, J.J., *dissenting.*

If the policy gives the insurer the right at any time to cancel and return the unearned premium, "upon surrender of the policy," or the right to cancel "upon notice," the return of the premium or tender thereof is not a condition precedent to the cancellation of the policy. *Phoenix Mutual Fire Insurance Co. v. Brecheisen,* 50 Ohio St. 542; *Arnfeld v. Guardian Assurance Co.,* 172 Penn. St. 605; *Newark Fire Ins. Co. v. Sammons,* 11 Ill. App. 230. If, however, the return of the unearned premium is a condition for exercising the right of cancellation, a failure to return or tender the premium renders the attempted cancellation nugatory. *Peoria M. & F. Ins. Co. v. Botto,* 47 Ill. 516; *White v. Conn. Fire Ins. Co.,* 120 Mass. 330. In New York, under the "New York Standard policy," whose words regarding cancellation are similar to those used in the case under discussion, a return or tender of the unearned premium is necessary to the cancellation of the policy. The court, in coming to this conclusion said, that although it is not within the language, it is implied. *Tisdell v. New Hampshire Fire Ins. Co.,* 155 N. Y. 163. In *Chrisman & Sawyer Banking Co. v. Hartford Fire Ins. Co.,* 75 Mo. App. 310, the court came to the same conclusion on the ground that a contract cannot be brought to an end by one party except by placing the other party in *statu quo.* Likewise, in *Continental Ins. Co. v. Daniel,* 25 Ky. Law Rep. 1501, the same was held, on the ground that the provision is somewhat ambiguous, and should be construed most strongly against the insurer. The dissenting opinion in the case at hand, is based on the ground that the court is really making a contract for the parties, while a court's jurisdiction only goes as far as the construction of a contract. *Ibid. Lewis v. Comm'rs of Bourbon Co.,* 12 Kan. 186.

INSURANCE — SUBROGATION — ACTIONS — PARTIES.— HANTON V. NEW ORLEANS & C. R. LIGHT & POWER CO., 50 So. 544.—*Held,* that where the owner of property which has been destroyed by fire through another's negligence has been paid part of his losses by an insurer, who thereby becomes subrogated to the remedies of the assured, an action to recover from the wrongdoer the value of the property destroyed is properly brought in the name of the assured, and the insurer is not a necessary party to such action.

It is well settled that if a loss by fire is not settled by a third person legally bound for its satisfaction and the insurance company is compelled